

Serial No. 09/835,870  
Reply to Office Action of April 27, 2005

### **REMARKS/ARGUMENTS**

Claims 1-25 were presented for examination and are pending in this application. In an Official Office Action dated April 27, 2005, claims 1-25 were rejected. The Applicants thank the Examiner for examination of the claims pending in this application and address the Examiner's comments below.

Applicants herein amend claims 1, 7, 20, 24, and 25. Support for the amendments can be found generally on page 23 of the specification. Claims 6 and 23 are canceled without prejudice and no new claims are presently added. These changes are believed not to introduce new matter, and their entry is respectfully requested. The claims have been amended to expedite the prosecution of the application. In making this amendment, Applicants have not and do not narrow the scope of the protection to which the Applicants consider the claimed invention to be entitled and do not concede that the subject matter of such claims was in fact disclosed or taught by the cited prior art. Rather, Applicants reserve the right to pursue such protection at a later point in time and merely seek to pursue protection for the subject matter presented in this submission.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and withdraw them.

#### **I. Rejections under 35 U.S.C. §102**

Claims 1-5, 8, 13, 20-22, and 25 were rejected under 35 U.S.C. §102(a)(e)(b) as being anticipated by U.S. Patent Publication No. 20010049741, ("Skene"). Applicants respectively traverse these rejections in light of the following remarks and respectfully request reconsideration.

MPEP §2131 provides:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in

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a single prior art reference." *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053(Fed. Cir.1987). "The identical invention must be shown in as complete detail as contained in the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

The claims as currently amended recite features lacking in the applied references. For example, independent claim 1 now recites, among other things, "a redirector server operable to select one front-end server from the plurality of front-end servers and generate a response referring the requesting software application to the selected front-end server, wherein the redirector server determines a composite quality factor based on at least partially two or more component factors for the plurality of second channels and selects the selected one front-end server at least partially based upon the relative composite quality factors of the plurality of second channels." Skene does not expressly or inherently disclose a redirector server that determines a composite quality factor based on two or more component factors for the plurality of second channels and then uses that composite quality factor to select a front-end server.

Skene appears to disclose a method for balancing the load on virtual servers managed by server array controllers at separate data centers that are geographically distributed on a wide area network such as the Internet. Skene further appears to employ an agent program, located at geographically distributed data centers, to collect and to provide to a client making a request, metric information related to a host, server array controller, virtual servers, and the path for resources associated with the client's request. See Skene abstract.

The Applicants' Invention provides a set of intermediary servers that are topologically dispersed throughout a network having an enhanced communication channel between the set of intermediary servers and an origin

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server. A redirector receives address resolution requests for the origin server, selects one of the intermediary servers in response to the request based on a quality factor or index formed from two or more component factors. The redirector thereafter provides the origin server with a network address of the selected intermediary server.

Skene, by the admission of the Examiner, does not disclose using a composite quality factor of the plurality of secondary channels as criterion for the selection of the front-end server.

As each and every element in newly amended claim 1 is not described, either expressly or inherently, by Skene, claim 1's rejection under 35 U.S.C. §102(a) must fail. The Applicants respectfully request that the Examiner withdraw the rejection. Claims 2-5, and 7-13 depend from claim 1 and are, for at least the same reasons, not anticipated by Skene. Accordingly, the Applicants respectfully request the withdrawal of the rejection of claims 2-5, and 7-13. For at least the same reasons, the Applicants submit that amended claims 20 and 25 are not anticipated by Skene. Claims 21, 22, and 24 depend from claim 20 and are, for at least the same reasons, not anticipated by Skene. The Applicants respectfully submit that the claims are in condition for allowance and respectfully requests reconsideration.

## **II. 35 U.S.C. §103 Obviousness Rejection of Claims**

Claims 6-7, 9-12, and 23-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over Skene as applied to claims 1-5, 8, 13, 20-22 and 25, further in view of Official Notice. Claims 14-19 were rejected under 35 U.S.C. §103(a) as being unpatentable over Skene as applied to claims 1-13 and 20-25 above. Claims 6 and 23 have been canceled without prejudice but as the elements of these claims have been incorporated into claims 1 and 20 respectively, and to expedite the prosecution of this application, their rejections are traversed below.

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MPEP §2143 provides:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The Examiner's reliance on Skene in view of Official Notice is misplaced. The Examiner takes Official Notice that load balancing is well known in the art as the selection criteria for choosing an optimal servicing server. The Applicants disagree and ask the Examiner to produce his authority for such a statement. The Applicants agree that load balancing is one criteria for choosing a server but argues that load balance is not the single criterion for choosing an optimal servicing server. Many factor components fall into consideration when choosing a servicing server. The Examiner appears to admit that other criteria for choosing a server exist as indicated by his second taking of Official Notice in using geographical proximity as a selection criterion for choosing an appropriate servicing server. Accordingly, the Applicants respectfully contest the Examiner's taking of Official Notice.

Despite the Examiner's claim of Official Notice, he fails to make a reasonable case why one of reasonable skill in the art at the time of the invention would be motivated to combine the teachings of Skene, and the apparent well known fact that load balancing improves overall system performance, to reach the conclusion that a combined index of component factors concerning the quality of secondary channels when used in selecting a front-end server by a redirector is obvious. The absence of a substantive and

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convincing argument reflects a gap in the Examiner's prima facie case for obviousness. Namely, the Examiner fails to identify a reference, or combination of references, that teaches or suggests all of the claimed limitations. The Applicants recognize the Examiner's ability to take Official Notice of facts known to be common knowledge in the art and capable of instant and unquestionable demonstration of being well known, but that does not alleviate the requirement that this "common knowledge" must still be sufficient to motivate one skilled in the art to modify Skene with a reasonable expectation of success. The Official Notice claimed by the Examiner does not provide such motivation. Furthermore, Skene in view of the Official Notice fails to teach or suggest the determination of a composite quality factor based on at least partially two or more component factors for a plurality of second channels to select a front-end server at least partially based upon the relative composite quality factors of the plurality of second channels as recited in claims 1 and 20. Arguably, the lack of any evidence to suggest the use of a combined quality factor of secondary channels to help select a front-end server is evidence of the patentability of the Applicants' invention rather than its obviousness.

The Applicants respectfully submit that claims 6-7, 9-12 and 23-24 (corresponding to amended claims 1 and 25) are patentable over Skene in view of Official Notice and ask that the Examiner withdraw the rejections and reconsider the claims.

The rejections of claims 14-19 under 35 U.S.C. §103(a) are moot in light of the aforementioned remarks and the Applicants respectfully request their rejections be withdrawn.

In view of all of the above, the claims are now believed to be allowable and the case in condition for allowance which action is respectfully requested. Should the Examiner be of the opinion that a telephone conference would

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expedite the prosecution of this case, the Examiner is requested to contact Applicants' attorney at the telephone number listed below.

No fee is believed due for this submittal. However, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

Respectfully submitted,

2054, 2005



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